

Energy Assistance Charges and Renewable Energy Resources and Coal Technology Development Assistance Charges are statutorily considered charges for public utility services and are subject to Gas Revenue Tax liability when that tax is computed at the 5% rate on gross receipts. See 86 Ill. Adm. Code 470.101. (This is a GIL).

September 13, 2002

Dear Xxxxx:

This letter is in response to your letter dated July1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

COMPANY sells and distributes natural gas in area of Illinois and is subject to the Gas Revenue Tax. COMPANY collects the lesser of 2.4 cents per therm or 5% of gross receipts on gas sold for use and consumption and on all services rendered in connection therewith.

My question is whether the Illinois Energy Assistance Charge and the Illinois Renewable Energy Charge (a.k.a. Renewable Energy Resources and Coal Technology Development Assistance Charge) are subject to the Gas Revenue Tax when computing the tax as 5% gross receipts? Currently COMPANY collects the Gas Revenue Tax on these charges when computing the tax at 5% of gross receipts.

- Paragraph (e) of Law Sec. 20/13-Supplemental Low-Income Energy Assistance Fund, states that the Energy Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service.
- I could find nothing in the law or regulations saying that the Renewable Energy Charge shall be considered a charge for public utility service although the Company's RIA tax service makes that statement.

I spoke with 'PERSON' in the Miscellaneous Tax area of the Illinois Department of Revenue. Although he could not give me a reference in the law or regulations, he and nearby employees did not think that these charges were subject to the Gas Revenue Tax. PERSON suggested I write to the Legal Division for a more precise answer.

DEPARTMENT'S RESPONSE:

The Energy Assistance Charge is a charge collected by each public utility, electric cooperative, as defined in Section 3.4 of the Electric Supplier Act, and municipal utility, as referenced in Section 3-105 of the Public Utilities Act, that is engaged in the delivery of electricity or the distribution of natural gas within the State of Illinois upon each of its customer accounts. Please note that municipal

electric utilities and electric cooperatives may elect not to assess the Energy Assistance Charge, but then cannot be reimbursed under the Low-Income Energy Assistance Program. Section 13 of the Energy Assistance Act of 1989 specifically provides that the Energy Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service. See 305 ILCS 20/13 (2000 State Bar Edition).

The Renewable Energy Resources and Coal Technology Development Assistance Charge is a charge collected by electric and gas utilities, whether owned by investors, municipalities or cooperatives, and alternative retail electric suppliers from each of its customer accounts. Municipal electric utilities and electric cooperatives may elect not to charge the Renewable Energy Resources and Coal Technology Development Assistance Charge. If a municipal electric utility or electric cooperative does not assess this charge, its customers are not eligible for the Renewable Energy Resources Program. Similar to the Energy Assistance Charge provisions described above, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997 specifically provides that the Renewable Energy Resources and Coal Technology Development Assistance Charge assessed by electric and gas public utilities shall be considered a charge for public utility service. See 20 ILCS 687/6-5 (2000 State Bar Edition).

The Gas Revenue Tax Act defines "gross receipts" as "the consideration received for gas distributed, supplied, furnished or sold to persons for use or consumption and not for resale, and for all services (including the transportation or storage of gas for an end-user) rendered in connection therewith, and shall include cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever." 35 ILCS 615/1 (2000 State Bar Edition); see also the enclosed copy of 86 Ill. Adm. Code 470.101. Certain charges are excluded from the definition of gross receipts. However, the assistance charges described above are not listed as exclusions from gross receipts that are subject to tax under the 5% tax rate under the Gas Revenue Tax Act. Because such assistance charges are statutorily considered charges for public utility services, those assistance charges are subject to Gas Revenue Tax liability when that tax is computed at the 5% rate on gross charges.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.